

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ELEAZAR VILLALOBOS

Claimant

VS.

HAYES COMPANY, INC.

Respondent

AND

FIREMAN'S FUND

Insurance Carrier

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Docket No. 228,349

ORDER

Respondent appeals from the preliminary hearing Order of January 5, 1998, wherein Administrative Law Judge John D. Clark awarded claimant benefits in the form of medical treatment through Dr. Pedro Murati.

ISSUES

- (1) Were respondent and its insurance carrier provided proper notice of the hearing held December 30, 1997?
- (2) Did claimant suffer accidental injury arising out of and in the course of his employment with respondent on the date or dates alleged?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Respondent and its insurance carrier, Fireman's Fund, argue they were denied notice of the hearing on December 30, 1997, and further were denied the right to present evidence on their position in this matter. Respondent acknowledges receiving notice of all proceedings in this matter. The problem arises in that respondent's insurance carrier was first listed as Travelers, which was error. Fireman's Fund, the insurance carrier on the date

of accident, was advised of the ongoing proceedings and acknowledged the amended notice of claimant's application for hearing. However, while respondent was advised of the December 30, 1997, hearing, respondent's insurance company, Fireman's Fund, was not.

The Workers Compensation Appeals Board has dealt with disputes regarding notice to respondents versus notice to insurance companies in the past. In Martel v. Waste Management of Wichita and Continental Casualty Company, Docket No. 222,516 (July 1997), the Appeals Board found that notice to the employer of a hearing is notice to the insurance company. The Appeals Board finds that claimant, having notified the respondent of the upcoming hearing, has satisfied the obligations of K.S.A. 1997 Supp. 44-534a. Respondent's appeal as to this issue is denied.

Respondent further contends that claimant has failed to prove that he suffered a compensable shoulder injury based upon the medical records of Dr. McMaster. As respondent was not at the preliminary hearing, the medical reports of Dr. McMaster were never presented to the Administrative Law Judge and cannot be considered as evidence.

In addition, claimant's testimony regarding his shoulder injury and how it occurred at work is sufficiently persuasive for the Appeals Board to find that claimant has proven that he suffered accidental injury arising out of and in the course of his employment with respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated January 5, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Richard A. Boeckman, Great Bend, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director